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AUTHOR Evans, William J., Jr.
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ABSTRACT

The purpose of tort law is to offer remedies to individuals for harm that resulted from the unreasonable conduct of others. This chapter examines those cases reported during 1989 that involved tort claims within the school context. Tort cases discussed in this chapter are organized under the following sections: (1) negligence in regard to injuries; (2) negligence defenses; (3) liability insurance; (4) attorney fees; (5) employee injuries, workers' compensation; (6) defamation; (7) intentional infliction of emotional distress; (8) tortious interference with a contract; (9) product liability; (10) construction contracts; and (11) constitutional torts. (MLF)

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TORTS

William J. Evans, Jr.

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INTRODUCTION

The purpose of tort law is to offer remedies to individuals for harm which resulted from the unreasonable conduct of others. State laws provide the basis for most actions, which are predicated on the principle that individuals are responsible for the consequences of

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their conduct.[1] The major categories into which tort actions can be grouped are: negligence, which involves conduct which falls below an acceptable standard of care; intentional torts, where actions are committed with a desire to do harm; and strict liability, where an injury results from the creation of an unusual hazard.

This chapter will examine those cases reported during 1989 which involved tort claims within the school context. Included are cases involving school officials, school employees, students, and in some instances others visiting school grounds. Torts arising out of interscholastic sport participation are not included as they are discussed in chapter six.

NEGLIGENCE

Negligence is established when one's actions fall below a standard of care expected of a reasonable person and the result is an injury. There must be a causal relationship between the alleged negligent conduct and the injury sustained. The behavior expected of school personnel is measured against what a reasonable and prudent professional of similar training and experience would have done, or should have done, in the same or similar circumstances. Against that standard, a court will determine whether liability may be imposed. Questions of law are determined by judges, while questions of fact are decided by juries.

Injuries

Schools are responsible for maintaining a safe and healthy environment in which learning can take place. The following cases illustrate how injuries to students, and in some cases adults, resulted in a variety of lawsuits with varying outcomes.

Off School Property and After School Hours. A Montana high school cheerleader was injured while participating in a privately sponsored summer cheerleading clinic, the funds for which were raised by the girls themselves. Following an unsuccessful action against the school district, the student appealed.[2] The court held that the district could not be held responsible for the girl's injuries merely because the school provided a bus for her transportation. The

1. *See generally* W. Prosser, Law of Torts (4th ed. 1971).
2. Rollins v. Blair, 767 P.2d 328 (Mont. 1989).

cheerleading advisor, who had attended the clinic at her own expense, was not seen as an agent of the school thus making the district liable.

A junior high school student, who was allegedly sexually molested by his mathematics teacher, brought an action against his California school district and teacher.[3] The student enrolled in a work-experience program which included helping the teacher correct papers in the teacher's apartment. The court found that the school district could not be held vicariously liable for the alleged molestation which took place in the apartment while the student was under the supervision of the teacher.

The parents of an eleven-year-old Indiana special education student brought a suit for damages following her alleged sexual abuse. The incident took place while the student was on a class outing during a time when the girl was unsupervised. The teacher had allowed the girl and three male classmates to leave her supervision and walk to a nearby nature center to wash their hands. The court saw the teacher's action as an exercise of professional judgment, not a policy decision which would be protected from liability.[4] However, a lack of immunity was not found to have made the teacher and her school liable. The possibility of unreasonable supervision was to be left for trial.

School Settings During School Hours. Two cases involved student injuries during physical education class. The mother of an Illinois student brought an action against the school board, board of trustees, and county educational services region.[5] Her daughter had been injured when required to climb a rope ladder in physical education class. The action against the education services region was dismissed as the court found that entity not to have any duties or a corporate identity which would allow it to sue or be sued. The provision of equipment by the school board was determined to be a discretionary act for which the board could not be held liable. However, sufficient facts were alleged to state a claim for willful and wanton misconduct. It was to be a matter for trial whether alleged inadequate supervision, inadequate equipment, and improper instruction support such a cause of action.

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3. John R. v. Oakland Unified School Dist., 256 Cal. Rptr. 766 (1989).

4. Borne v. Northwest Allen County School Corp., 532 N.E.2d 1196 (Ind. Ct. App. 1989).

5. Bowers v. Du Page County Regional Bd. of School Trustees Dist. No. 4, 539 N.E.2d 246 (Ill. App. Ct. 1989). *See* Buckvar v. Syosset Cent. School Dist., 538 N.Y.S.2d 563 (App. Div. 1989). No rational basis was found to hold a school district negligent for injuries sustained by students who collided during a flag football game.

An action for negligent supervision was brought against two physical education teachers after an Alabama eighth-grade student broke his elbow when he slipped on a puddle of water while playing basketball.[6] Summary judgment was granted to the teachers as all the evidence showed that the teachers had exercised reasonable and proper supervision over their students. Both teachers had been teaching at the school only a few weeks, and neither was aware of a tendency for roof vents to leak water on the gym floor. In addition, neither the teacher nor any students had been aware of the wet condition prior to the accident.

A North Carolina student appealed an order of the Industrial Commission which held that his shop teacher was not negligent in connection with injuries the student sustained during class.[7] The student, who was deaf, injured his eyes while trying to add oil to a hydraulic lift. In affirming the decision, the court found that the teacher did not owe the student a greater duty of care due to the student's deafness. Rather, the standard of care was that of ordinary prudence given the situation of the student's handicap. The teacher had instructed the student on the rules of safety, one of which was to leave alone those things which did not pertain to what he was doing. This warning was found to have adequately instructed the student about any potential dangers that might result from his attempt to add oil to the lift.

A Michigan high school teacher attempted to pull back the chair of a student in order to discipline him. Unknown to both the student and teacher, three of four fasteners holding the seat to the frame were missing causing the student to fall to the floor and sustain injury. The student failed in his suit against the teacher as the court found no cause of action for simple negligence.[8] The teacher was found to have been attempting to maintain proper discipline, and not grossly abusive with a disregard for the health and safety of the student.

Approximately two years after a thirteen-year-old student had been administered corporal punishment he was diagnosed as suffering from post-traumatic stress disorder. His parents brought suit against the school district seeking recovery for the psychological and physical injuries sustained by their son.[9] The court, while not specifically addressing the psychological aspect of the student's injuries,

6. Best v. Houtz, 541 So. 2d 8 (Ala. 1989).
7. Payne v. Department of Human Resources, 382 S.E.2d 449 (N.C. Ct. App. 1989).
8. Atkinson v. DeBraber, 446 N.W.2d 637 (Mich. Ct. App. 1989).
9. Mathis v. Berrien County School Dist., 378 S.E.2d 505 (Ga. Ct. App. 1989).

held that the three "licks" the student received were not so severe as to be in violation of Georgia state law or school board rules.

A twelve-year-old New York student was escorted from her fifth floor art classroom to her third floor social studies classroom by her social studies teacher. When she had completed her work, the teacher directed her to return to the art class. En route the girl was accosted by three students and raped. The student's mother brought an action against the board of education for breach of a special duty and negligent supervision.[10] Following the trial court's summary judgment dismissing the complaint, the mother sought appeal. The appellate court found material issues of fact relating to the school's actions. While the school was not found to have a special duty to the student, it was expected that the standard of care and supervision over pupils would be such as that of a reasonably prudent parent. In a school where two aides and two security guards were assigned to each floor, the teacher's actions were not found to have met that standard. While recognizing that a school is not the insurer of student safety, it was held liable in damages for a foreseeable injury proximately related to an absence of supervision.

A personal injury action was brought on behalf of a student at a Louisiana school for the mild and moderately retarded.[11] While walking toward the bus which was to take him home, another student pulled his arm and then struck him in the jaw. His action against the school board and state resulted in a directed verdict for the defendants. The appellate court affirmed the decision finding the incident unforeseeable in nature, and therefore unavoidable. The foster child status of the student was not found to impose upon the state or school board strict liability for the acts of minor children.

A high school senior brought suit against a New York school district for injuries he received while sledding on school premises during a scheduled recess period.[12] The appellate court upheld the dismissal of the complaint. There was no proof that the school's rule against sledding was promulgated for any reason other than to prevent classroom distractions. A teacher who observed the sledding distracting her class had gestured for the plaintiff to leave the area. She was not found required to take energetic steps to intervene in an activity common to the student body. Lack of supervision was not the proximate cause of the student's injuries.

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10. Logan v. City of N.Y., 543 N.Y.S.2d 661 (App. Div. 1989).
11. Gooden v. State, 546 So. 2d 279 (La. Ct. App. 1989).
12. Gattyan v. Scarsdale Union Free School Dist. No. 1, 543 N.Y.S.2d 732 (App. Div. 1989).

In a case with highly dramatic circumstances, a Kansas teenager, later determined to be insane, shot and killed his junior high school principal and wounded three other people. A teacher and a student, each of whom had been shot in the leg, brought an action against the school district and the teenager to recover for damages.[13] The court held that the Kansas Workers' Compensation Act barred the teacher's action against the district. The jury was, however, allowed to apportion fault to the school district. In finding against the teenager, the court found that an insane person who shoots another can be held civilly liable. An insane person can be found to have acted intentionally, even if his motives were entirely irrational.

A Louisiana elementary student fell while she was running to get a drink of water from an outside drinking fountain located on school grounds. Her successful suit for damages was appealed by the school board.[14] That decision was reversed as the court found no actual or constructive notice of a defect. In addition, expert testimony indicated no causal relationship between the student's fall and a condition of osteomyelitis which developed in her hip.

A newspaper reporter was allowed to enter a classroom in a New York school district's alternative education program. The parents of a student who was interviewed brought an action alleging negligent supervision and breach of a common-law right to privacy.[15] The court explained that New York does not recognize a common-law right of privacy. Additionally, a determination was made that adequate supervision does not encompass a duty to protect students from the publication of a newspaper.

Shortly after the start of the school day, a New York student left his classroom without permission and approached a fellow student. After an exchange of words, the boy allegedly struck and injured the second student who brought suit against the school district.[16] The court granted a summary judgment for the district, finding no factual basis that the district had actual knowledge constituting notice of a particular danger at a particular time.

A New York school district appealed the denial of its motion to dismiss a student's negligence action.[17] The student was injured in an altercation with an older student during recess. In upholding the motion, the appeals court identified a number of issues which

13. Williams v. Kearbey, 775 P.2d 670 (Kan. Ct. App. 1989).
14. Morris v. Orleans Parish School Bd., 544 So. 2d 440 (La. Ct. App. 1989).
15. Prescott v. Newsday, Inc., 541 N.Y.S.2d 501 (App. Div. 1989).
16. Schleckler v. Connetquot Cent. School Dist., 541 N.Y.S.2d 127 (App. Div. 1989).
17. James v. Gloversville Enlarged School Dist., 548 N.Y.S.2d 87 (App. Div. 1989).

needed resolution by a jury. The complaint alleged that the plaintiff told his teacher that the older student had tripped him shortly before the attack in question, and that she had taken no action. It was also alleged that the lunchroom aides sat on a bench talking with each other during the incident in violation of written rules. Finally, there was the question of whether the teacher and principal should have foreseen the possibility of the altercation.

An eighth-grade student was injured while trying to break up a fight between two of his New York classmates. His action against the school district and classmates was dismissed for failure to state an action.[18] The court found the "danger invites rescue" doctrine did not apply. There was no testimony that the fighting students were actually at risk of serious injury, or that the altercation rose to the level of a perilous situation which invited rescue.

En route to and from School. A nine-year-old Kansas student, who got off his school bus and stopped to pick some flowers for his grandmother, was struck by an automobile as he attempted to cross the street to reach his house. His parents claimed that the school district was negligent in its operation of the bus; specifically, that the student was required to cross the street to reach his home. The Kansas Supreme Court disagreed finding that the bus driver had no idea that the student had been crossing the street.[19] Prior to the first day of school, parents had been informed of the bus routes and requested that they choose the nearest stop on the same side of the street as their house. The student had never before crossed the street within the view of the bus, and on the day of the accident did not attempt to cross the street until long after the bus had departed.

The father of a third-grade Illinois girl contacted the principal of her school regarding the harassment of his daughter by an older student. Since the problems primarily had taken place after the students departed their buses and waited for the school doors to open, the principal changed the older student's bus stop and took other precautions. Despite these actions, the girl suffered a partial loss of vision in one eye when she was hit by the older student after departing her bus. The plaintiffs appealed the directed verdict granted the

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18. Ha-Sadi v. South Country Cent. School Dist., 539 N.Y.S.2d 47 (App. Div. 1989).

19. Hackler v. Unified School Dist. No. 500, 777 P.2d 839 (Kan. 1989). *See* Mount Pleasant Indep. School Dist. v. Estate of Lindburg, 766 S.W.2d 208 (Tex. 1989). A school district was not held liable for the death of a student who was struck and killed when she crossed the road after the school bus was a quarter of a mile away. Ordinary care was the appropriate standard by which to judge the district's actions. Kramer v. Lagnese, 535 N.Y.S.2d 13 (App. Div. 1988). The duty of a bus company and driver to a child terminated when she alighted safely on the curb.

school district in the action brought on behalf of the girl.[20] The court found that the absence of willful and wanton misconduct precluded liability on the part of the school district.

The parents of an Illinois school bus passenger brought an action against the bus driver for the crippling injuries sustained by their daughter.[21] The court determined that a neutral posture on both the trial and appellate levels was appropriate and able to insure the rights of the mentally incompetent minor. In finding for the bus driver, the attachment of wooden blocks to the gas pedal was not found to have created a dangerous condition which inhibited the driver from taking defensive action to prevent the accident.

An Arizona high school student was injured when she was struck by an automobile while crossing the street in a crosswalk opposite an elementary school. The court of appeals found no duty owed to a high-school age pedestrian deemed to have sufficient judgment and maturity to cross the street.[22]

A five-year-old Illinois kindergarten student was injured when he was struck by an automobile in an intersection adjacent to his schoolyard. The court of appeals affirmed the trial court decision for the school board in the suit for damages brought by the student's father.[23] The court held that without a showing of willful and wanton conduct, or evidence of prior accidents involving other children, liability could not be assigned to the school.

School Buildings and Grounds. A member of a community theater group brought a personal injury action against an Alabama school district.[24] While assisting in the preparation of a stage set, he was struck by a metal bar that supported the stage lighting fixtures in a high school auditorium. The theater group, which was not part of the school system, had been granted permission by the school board and principal to use the auditorium free of charge subject to the board's rules and regulations governing the use of school facilities. In denying the plaintiff's claim, the court found no expressed or implied contract to furnish the theater group with a safe facility. The group's use of the facility was predicated upon a regulation in which it assumed full liability for any and all personal injuries arising from the use of the facility.

A North Carolina driver and her passengers were injured in an accident when their automobile was struck while they were backing

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20. Templar v. Decatur Pub. School Dist. No. 61, 538 N.E.2d 195 (Ill. App. Ct. 1989).
21. Cogan v. Kal Leasing, Inc., 546 N.E.2d 20 (Ill. App. Ct. 1989).
22. Alhambra School Dist. v. Superior Court, 780 P.2d 401 (Ariz. Ct. App. 1989).
23. Winston v. Board of Educ. of Chicago, 537 N.E.2d 964 (Ill. App. Ct. 1989).
24. Vardaman v. Florence City Bd. of Educ. 544 So. 2d 962 (Ala. 1989).

out of a school parking lot. Their suit against the school district charged negligent and improper design of the parking lot entrance, failure to maintain the parking lot in a reasonably safe condition, and failure to properly direct traffic out onto the highway.[25] The trial court granted summary judgment for the school district and the plaintiffs appealed. In affirming for the school district, the court denied the plaintiffs' contention they were invitees to the property. Although there was a basketball game going on at the school at the time of the accident, the plaintiffs' sole reason for turning into the driveway was to turn around. In addition, while the court recognized that a higher level of care is owed to young children who are unable to appreciate a potential danger, such a duty was not owed to the minor plaintiffs who were accompanied by an adult who had knowledge of the potential hazard.

While taking her daughter to a school play, a Louisiana woman fell off a curb at the end of a sidewalk. In an action for damages, she contended her fall was the result of a negligent and defective condition for which the school board was responsible.[26] The court of appeals reversed the trial court's decision for the plaintiff. Although the accident took place at night, the woman was found to have a duty to proceed with greater caution than in daylight. The existence of a curb at the end of a sidewalk was not found to have created an unreasonable risk of harm.

An Idaho junior high school student was injured when he tripped over sprinkler pipes while playing football on the school's field before school. He sought appeal when his personal injury claim against the school district was dismissed by the trial court.[27] In reversing the decision, the appellate court held that the state's recreational use statute did not apply. The court explained that if the statute were applied to injuries children suffered while on school premises, the special relationship that a student has to a school district would be impaired. Furthermore, although the injury occurred before school, testimony indicated that the principal was aware of the football game. Since the student was thus under the supervision, authority, and control of the district, he was owed a duty of care for his safety.

An Illinois student was injured in physical education class when another student fell into him after stepping on an uneven portion of the field during a touch football game. His action against the school

25. Yates v. J.W. Campbell Elec. Corp., 382 S.E.2d 860 (N.C. Ct. App. 1989).
26. Williams v. Orleans Parish School Bd., 541 So. 2d 228 (La. Ct. App. 1989).
27. Bauer v. Minidoka School Dist. No. 331, 778 P.2d 336 (Idaho 1989).

district for damages alleged a failure to keep the field in reasonably safe condition, and negligence when students were required to use the field without sufficient warning.[28] The court found for the school district holding both the defective equipment and premises liability analysis inapplicable.

A twelve-year-old Louisiana girl was injured when she stepped in a hole at the base of a tree in her school's playground. The parish school board appealed the civil district court award of damages to the student.[29] The appellate court held that the hole, which was surrounded by a root and covered with grass, posed an unreasonable risk of harm. The fact that the condition was not easily discoverable did not serve to absolve the school district from blame.

School-related Activities. Automobile accident victims brought an action against a Georgia school that had hired an off-duty police officer to direct traffic during a school festival.[30] The victims alleged that the officer's instructions led to their accident. In denying the claim, the court held that since the officer was acting as an independent contractor at the time of the accident, the school could not be held liable.

An Ohio student purchased a ticket to a school football game which was being held at the local fairgrounds. He died after inhaling helium from a tank left on the fairgrounds. The student's father brought a wrongful death action against the helium distributor, manufacturer, fairgrounds owner, and the school board.[31] The trial court dismissed the action against all the defendants and the father appealed. The Ohio Supreme Court affirmed the decision holding the distributor owed no duty to the student, and the fairgrounds owner was not liable absent conduct which was willful and wanton.

NEGLIGENCE DEFENSES

Immunity

The most commonly used defense has been governmental (sovereign) immunity. Courts have traditionally been reluctant to disturb this defense as school districts are state agencies created by state law to perform a governmental function. However, the use of this de-

28. Brock v. Rockridge Community Unit Dist. 300, 539 N.E.2d 445 (Ill. App. Ct. 1989).
29. Levie v. Orleans Parish School Bd., 537 So. 2d 351 (La. Ct. App. 1988).
30. Beck v. Phideia School, Inc., 381 S.E.2d 132 (Ga. Ct. App. 1989).
31. Jeffers v. Olexo, 539 N.E.2d 614 (Ohio 1989).

fense is increasingly being restricted by statute as well as judicial interpretation. Litigation in this area generally seeks to test limits and exceptions.

Common Law (Governmental Immunity). The parents of a Michigan student brought an action to recover for injuries sustained by their son on a school playground. The trial court granted a summary disposition of the case in favor of the school, but denied it to the school superintendent and principal. That decision was reversed on appeal.[32] The superintendent was not found entitled to absolute immunity as the highest executive official of the school. However, he and the principal were entitled to limited governmental immunity as their actions in setting policy concerning supervision of students on the playground were seen as discretionary.

A Michigan volunteer teaching assistant brought a negligence action after being attacked and raped while at school. The suit named the city, board of education, superintendent, principal, head of security, and security guards as defendants. The plaintiff appealed the trial court's partial summary judgment.[33] The issues under consideration were the intentional nuisance claim, the determination of which acts were ministerial and which were discretionary, and the availability of vicarious liability. The court denied the intentional nuisance claim as the complaint did not indicate that the defendants intended to create an unsafe building. The actions of the superintendent and principal were found to require deliberation, decision-making, and judgment. Therefore, they were found to be discretionary-decisional acts for which immunity is available. As to the security personnel, the essence of their duties was to follow or implement security procedures. These were ministerial actions and not found to be immune from tort liability. Finally, specific conditions of nongovernmental activity were not present so as to make the school board vicariously liable.

A teacher was assaulted and injured while he was stationed at an open gate at the end of a New York City school playground. His action against the board of education alleged that it negligently allowed the gate to remain broken and failed to provide adequate security.[34] Finding the provision of security to be a governmental function, the court held the school board immune from liability.

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32. Kirschner v. Carney-Nadeau Pub. Schools, 436 N.W.2d 416 (Mich. Ct. App. 1989).
33. Giddings v. City of Detroit, 444 N.W.2d 242 (Mich. Ct. App. 1989).
34. Bonner v. City of N.Y., 539 N.Y.S.2d 728 (App. Div. 1989).

While a Pennsylvania student was driving himself between his high school and vocational school, he caused an automobile accident which killed a mother and injured two of her children. Suit was brought against the county vocational school for fatal and nonfatal injuries.[35] In finding for the defense, the court found that the vehicle exception to sovereign immunity applies only to situations where an employee actually operates the vehicle in question. Furthermore, while damages could be recovered if the student was acting as an employee of the school, the court rejected this assertion.

A seven-year-old Missouri student was injured when she was struck by an automobile when she fell into the street as she walked between two school buses. An action was brought against the assistant principal and a teacher alleging a failure to properly escort the student, supervise her actions, or warn her of the potential danger. The trial court dismissed the action, finding the defendants immune from liability, and the plaintiff appealed.[36] While expressing no opinion on whether a cause of action had been stated, the appeals court reversed the decision and remanded the case for trial. The defendants were not found to be public officers immune from liability for their discretionary acts.

A Pennsylvania middle-school student was sexually assaulted while attending a school sponsored workshop. Her suit against the school district and various school employees was dismissed by the trial court. In the appeal of that decision, the plaintiffs contended that the action fell under the real estate exception to the district's defense of immunity.[37] The appellate court concluded that the exception did not apply as there was no injury caused by a defect in the land itself, but rather a result of the actions of another student.

An 800-pound wood lathe, which had never been bolted to the school's floor, was determined by a Pennsylvania Commonwealth Court not to be a part of the realty.[38] Therefore, a high school student who was injured while using the lathe in shop class could not bring suit under the real property exclusion to the school district's immunity.

When a Utah high school pumped water from its basement out onto an adjoining field, the basement of a house on adjacent property was flooded causing damage to the home. The school district's defense against the homeowner's negligence action was the immunity

35. Capuzzi v. Heller, 558 A.2d 596 (Pa. Commw. Ct. 1989).
36. Jackson v. Roberts, 774 S.W.2d 860 (Mo. Ct. App. 1989).
37. Cotter v. School Dist. of Philadelphia, 562 A.2d 1029 (Pa. Commw. Ct. 1989).
38. Canon-McMillan School Dist. v. Bioni, 561 A.2d 853 (Pa. Commw. Ct. 1989).

a governmental agency enjoys for the management of flood waters. In rejecting this argument, the Utah Supreme Court found the school district liable as its actions were found indistinguishable from those any other land owner might take to protect its property.[39]

Another Utah homeowner sought compensation for water damage to his property. In this instance, a runoff problem was created when a school resurfaced its parking lot. Again the court rejected the school district's flood control defense.[40]

A handicapped Illinois student was injured when she was thrown from her wheelchair while being taken to a district maintained playground across the street from her school. She brought suit against the school district and city, and the city filed a counterclaim against the district. The trial court found the district immune, dismissed the claims, and the plaintiff and city appealed.[41] The parents of the student had previously informed the school of the necessity of using the seatbelt attached to the wheelchair. At the time of the accident, the seatbelt was not in use and the student was being pushed to the playground by a classmate. In its reversal of the decision, the appellate court found the district guilty of willful and wanton misconduct.

The Idaho Supreme Court referred to the tragic death of a six-year-old boy when it reversed a decision which had found a principal and school district immune from liability.[42] The boy had become unconscious, and his mother, who was working in the school that day, shouted to another teacher to call an ambulance. The principal stopped the call and walked to the scene which was over 200 feet away. He then carried the child back to the office, and requested an ambulance. Expert testimony stated that timely action, involving trained assistance even a minute sooner, would have saved the boy's life. The court found that the discretionary function exception to liability does not apply to negligent operational decision-making. Deciding to call off an ambulance and failing to give adequate first aid were not seen as basic policy decisions for which immunity was a defense.

A six-year-old Florida student was injured by a classmate during horseplay which occurred as the students were preparing to enter their respective classrooms. The action against the school district al-

39. Branam v. Provo School Dist., 780 P.2d 810 (Utah 1989).
40. Williams v. Carbon County Bd. of Educ., 780 P.2d 816 (Utah 1989).
41. Bertetto v. Sparta Community Unit District No. 140, 544 N.E.2d 1140 (Ill. App. Ct. 1989).
42. Czaplicki v. Gooding Joint School Dist. No. 231, 775 P.2d 640 (Idaho 1989).

leged the principal negligently deviated from the county school manual by not having school teachers on duty as supervisory personnel at classroom doorways.[43] In reversing the trial court's decision for the school district, the appeals court found that sovereign immunity was not an appropriate defense for the negligent performance of an operational duty. The plaintiff's claim was not that an inadequate number of supervisory personnel were assigned, but that the principal had negligently failed to carry out an operational duty to deploy personnel in accord with the school board manual.

An eighth-grade special education student was injured while using a table saw in his woodworking class. The court refused to grant the Kansas school district's motion to dismiss the action for damages brought on behalf of the student.[44] The duties of informing the woodworking teacher that the child was handicapped, and of providing instructions on safety procedures, were not discretionary and thus not entitled to immunity.

While attempting to hold an eight-year-old student in position to administer corporal punishment, a Georgia principal broke the student's arm. The trial court found the principal immune from liability, and the student appealed.[45] In reversing the decision, the appellate court found it a matter for the jury to decide whether the principal exercised sound discretion in the administration of the punishment, and whether it was excessive or unduly severe.

Statutory Immunity. While an Arkansas school district's tractor was pulling a mower on school premises, it caused a rock to be thrown at a student resulting in blindness in one eye. Suit for injuries was brought against the school district.[46] As the tractor was being operated by a school employee under the direction of a maintenance supervisor, the district was found immune from liability. In addition, the tractor and mower were not found to be motor vehicles for which insurance would be required.

The mother of an Illinois student sued the school district for injuries incurred by her daughter who fell while skipping rope on a cracked and uneven sidewalk.[47] The court of appeals recognized that the school district was not immune from an action brought on the theory of landowner's premises liability. However, the court did find

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43. Bonica v. Dade County School Bd., 549 So. 2d 220 (Fla. Dist. Ct. App. 1989).
44. Greider v. Shawnee Mission Unified School Dist. No. 512, 710 F. Supp. 296 (D. Kan. 1989).
45. Crews v. McQueen, 385 S.E.2d 712 (Ga. Ct. App. 1989).
46. Cousins v. Dennis, 767 S.W.2d 296 (Ark. 1989).
47. Ramos v. Waukegan Community Unit School Dist. No. 60, 544 N.E.2d 1302 (Ill. Ct. App. 1989).

the district immune for liability for ordinary negligence where sufficient factual allegations of willful and wanton misconduct were not alleged.

A Mississippi school district was determined to have properly asserted a defense of sovereign immunity in an action which arose from a school bus accident.[48] Then the court examined the degree of the financial liability for the damages resulting from the negligent operation of the school bus. The court found the district's liability statutorily limited to $10,000 for personal injuries, and $1,000 for property damage.

The waiver of a teacher's qualified immunity was at issue following the injury of a Texas high school student.[49] The injury occurred during an automobile mechanics class when the student attempted to "prime" the carburetor by pouring gasoline directly into it. When another student turned the ignition, the resulting explosion severely burned the plaintiff. The court of appeals affirmed the district court's decision for the teacher and school district. The circumstances were not found to have involved the operation or use of an automobile within the meaning of the statute waiving sovereign immunity.

When a fourteen-year-old Pennsylvania student lost control of his bicycle in a gravel storm ditch, he sustained serious injuries including a shattered kidney, brain damage, and permanent disfigurement. In a civil suit for damages, the borough and school district were alleged to have negligently allowed a dangerous condition to exist on a playground.[50] The trial court's decision for the plaintiff was reversed on appeal. The district was found to owe no duty of care to the student who was using the premises for recreational purposes. Therefore, the district was immune from liability under the Recreation Use of Land and Water Act.[51]

A Michigan student was injured on a snow pile which remained on the school's playground after the school's parking lot had been plowed. The trial court granted a summary judgment in favor of the school district and the plaintiffs appealed.[52] The appellate court affirmed the lower court decision, finding that the temporary accumulation of snow did not create an intentional nuisance overcoming the district's claim of immunity.

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48. Richardson v. Rankin County School Dist., 540 So. 2d 5 (Miss. 1989).
49. Naranjo v. Southwest Indep. School Dist., 777 S.W.2d 190 (Tex. Ct. App. 1989).
50. DiMino v. Borough of Pottstown, 564 A.2d 1329 (Pa. Commw. Ct. 1989).
51. Pa. Stat. Ann. tit. 68 § 477-3, 477-6 (West Supp. 1990).
52. Hendricks v. Southfield Pub. Schools, 444 N.W.2d 143 (Mich. Ct. App. 1989).

A Pennsylvania school district was sued by a pedestrian for injuries sustained when he fell on an accumulation of ice and snow on a sidewalk. The district's immunity defense was recognized by the trial court and the pedestrian appealed.[53] The sole question examined was whether an accumulation of snow and ice can constitute a dangerous condition of sidewalks under the governmental immunity provisions of the Judicial Code, thus rendering the district not immune from possible liability. In reversing the decision, the appeals court recognized that the snow and ice had accumulated in hills and ridges, and that the district had actual or constructive notice of the condition. Therefore, the district was found to have a duty to correct the condition.

A Montana woman fell down the alley stairs leading to a school gymnasium. Her suit against the school district and chairman of the board of trustees alleged her fall was caused by a failure to light and remove ice and snow from the stairway.[54] The trial court allowed the plaintiffs to add the principal and janitors as additional defendants, but when the court denied the additional defendants summary judgment they filed for a writ of supervisory control. The appeals court held that the principal and janitors were properly added; however, this was not found to affect liability. The school district and its individual employees were determined to be immune from liability for the school board's failure to provide funding for additional custodians and maintenance of the stairway.

Statutory immunity of a different nature was recognized in a Louisiana case. A teacher, who was also a justice of the peace, was found entitled to judicial immunity when charged with negligently refusing to issue an arrest warrant for a high school student.[55]

Other Defenses

Notice of Claim. A New York appeals court upheld a lower court decision allowing a late notice of claim against a school.[56] The incident had been witnessed by at least one employee of the district, and the school had quickly received written detailed reports of the student's injuries. The district failed to show that it was prejudiced by a late notice of claim, or that its ability to investigate the claim had in any way been impaired.

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53. Giosa v. School Dist. of Philadelphia, 562 A.2d 411 (Pa. Commw. Ct. 1989).
54. State *ex rel.* Eccleston v. Montana Third Judicial Dist. Ct., 783 P.2d 363 (Mont. 1989).
55. Moore v. Taylor, 541 So. 2d 378 (La. Ct. App. 1989).
56. Friedman v. Syosset Cent. School Dist., 545 N.Y.S.2d 814 (App. Div. 1989).

A school bus driver who was injured in the course of her employment brought an action for damages against her Georgia county school district.[57] The trial court denied the district's motion to dismiss the action due to a failure by the plaintiff to give timely notice of her injuries. The Georgia Supreme Court held that a twelve month statute of limitations for claims against a county did not apply to claims against a county school district.

On appeal, a late notice of claim was allowed in a negligence action brought against a city board of education for injuries sustained when the plaintiff slipped and fell on a New York high school's stairs.[58] A comptroller's hearing, held within four months of the injury, was found to have given the board of education sufficient information to investigate the injury.

An Indiana teacher challenged her dismissal on constitutional grounds. Reversing the decision of the trial court and remanding the case for trial, the Indiana Supreme Court held that a 180 day notice of claim period did not apply to the teacher's civil rights claim.[59]

The wife of a New York fall victim sought to file a late notice of claim for psychological problems, including a suicide attempt and resulting paraplegia. The court allowed the late notice as the problems resulting from the fall were found to be components of his injuries for which the school district had been timely notified.[60]

A New York student, who had been injured three years earlier in a gymnasium class, sought to file a late notice of claim against the school.[61] In denying relief, the appeals court found that the petitioner failed to adequately explain the three-year delay. The court failed to recognize the claim of late notice due to the infancy of the injured and to the parental claim of unfamiliarity of the law.

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57. Payne v. Blackwell, 384 S.E.2d 393 (Ga. 1989). *See also* Cassidy v. Board of Educ., 557 A.2d 227 (Md. 1989). Where a court dismisses a first complaint for failure to allege a notice of claim, a subsequent action where notice requirements are met is not precluded. Commercial Union Ins. Co. v. La Villa Indep. School Dist., 779 S.W.2d 102 (Tex. Ct. App. 1989). Representations by a contractor that he was going to repair paint problems in a school gymnasium did not serve to toll a statute of limitations.

58. Calia v. Board of Educ., 546 N.Y.S.2d 646 (App. Div. 1989).

59. Werblo v. Board of Trustees, 537 N.E.2d 499 (Ind. 1989). In Sullivan v. Board of Educ., 546 N.Y.S.2d 665 (App. Div. 1989) a principal's action alleging defamation and intentional infliction of emotional distress was barred by a late notice of claim. In Lourdes High School v. Sheffield Brick & Tile Co., 870 F.2d 443 (8th Cir. 1989) the Minnesota statute of repose was held constitutional, thereby barring a high school's action against a flooring manufacturer.

60. Fish v. New York Mills Union Free School Dist., 543 N.Y.S.2d 774 (App. Div. 1989).

61. Schirripa v. Birch Lane Elementary School, 546 N.Y.S.2d 160 (App. Div. 1989).

BEST COPY AVAILABLE

The parents of a Maine student who claimed his fifth-grade teacher made improper sexual advances brought an action for damages against the city, school system, and the principal.[62] Summary judgment was granted in favor of the defendants as the plaintiff had failed to file a notice of claim within 180 days of the incident. The parents failed to establish they were, in some meaningful way, prevented for nearly two years from learning of prior incidents involving the teacher.

A parent of an Oklahoma student sued the school district, board of education, and school bus driver for the sexual assault of her daughter by the driver.[63] The action was commenced after it was revealed during his trial and conviction that the driver had prior convictions for sexual crimes. The trial court's summary judgment for the school district was upheld on appeal. The court found that additional requests for information by the defendant's insurance company did not serve to extend the statutory period of limitations.

A New York appeals court held that since the wife of a plaintiff in a personal injury case was not a party when the action commenced, she could not assert a derivative claim. Her cause of action, brought three-and-one-half years later, was found subject to the one-year ninety-day statute of limitations.[64]

Comparative Negligence. A Missouri student was injured when the school bus in which she was riding pulled forward while she was standing in the aisle. Her appeal of the trial court's decision centered on the question of whether a fair trial was prevented by the instructions given to the jury.[65] The appellate court concluded that jury instructions, which stated the student must be assessed a percent-

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62. Gardner v. City of Biddeford, 565 A.2d 329 (Me. 1989). In Commonwealth v. Willis, 552 A.2d 682 (Pa. Super. Ct. 1988) the inconsistent testimony of an eight-year-old student who had been sexually abused by a teacher was found sufficient to support a finding of guilt.

63. Doe v. Independent School Dist. No. I-89, 780 P.2d 659 (Okla. 1988).

64. Kettle v. Sweet Home Cent. School Dist., 543 N.Y.S.2d 783 (App. Div. 1989). *See also* Spedding v. Bowman, 544 N.Y.S.2d 93 (App. Div. 1989). A teacher seeking reinstatement, back pay, and benefits was required to file a notice of claim prior to bringing an action against the school district or board of education. Pueblo School Dist. No. 60 v. Clementi, 776 P.2d 1152 (Colo. Ct. App. 1989). An administrative law judge was found to have abused his discretion by not holding a full hearing on the district's claim that it had timely filed a petition to review the judge's original order. Castagna & Son, Inc. v. Board of Educ. of N.Y., 542 N.Y.S.2d 622 (App. Div. 1989). A contractor's claim for delay damages was barred by a late notice of claim. Lopez v. Brentwood Union Free School Dist., 539 N.Y.S.2d 969 (App. Div. 1989). An action against a school district for injuries sustained by individuals on school property was dismissed for failure to serve timely notice.

65. Cooks v. Normandy School Dist., 778 S.W.2d 339 (Mo. Ct. App. 1989).

age of fault for failing to follow the bus driver's instructions, were proper.

A Louisiana school bus driver struck a parked van when he attempted to pull onto a narrow side street. Parents of the children who were injured while riding in the bus brought suit against the school district and the owner of the van.[66] The court of appeals upheld the lower court finding of negligence by the bus driver, but reversed the decision regarding the driver of the van. She was found 30% at fault for impeding traffic by parking in a no parking zone.

LIABILITY INSURANCE

Twelve cases involved questions concerning liability insurance. In only four of these was the liability insurer successful in limiting its responsibility.

Following the sexual abuse of a California third-grade student by her teacher, the school district's insurer sought a declaratory judgment that the educator's employment liability policy did not provide coverage for the abuse. After a lower court decision for the insurer, the pupil appealed.[67] While expressing sympathy for the injuries suffered by the student, the court failed to expand the policy's coverage. The event did not occur while the teacher was engaged in an activity reasonably related to the goal of educating children, and therefore was not covered by the policy.

The insurer of the parents of a Massachusetts youth who broke into a school and started a fire, sought a declaration that the parent's homeowner's policy did not provide coverage for the damage caused by the fire. The court found applicable the language in the policy which excluded property damage expected or intended by the insured.[68]

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66. Simpson v. Caddo Parish School Bd., 540 So. 2d 997 (La. Ct. App. 1989).

67. Horace Mann Ins. v. Analisa N., 263 Cal. Rptr. 61 (Ct. App. 1989). *See* Matta v. Board of Educ., 552 A.2d 1340 (Md. Ct. Spec. App. 1989). School board was not obligated to provide a defense or insurance coverage for a teacher accused of inappropriate sexual conduct with a student.

68. City of Newton v. Krasnigor, 536 N.E.2d 1078 (Mass. 1989).

A Kansas board of education brought suit against its liability insurer to recover expenses from ongoing school desegregation.[69] The Kansas Federal District Court upheld the insurer's motion for summary judgment. The expenses incurred by the school district were found within the outstanding litigation exception to coverage under the liability policy.

A mini-van owned and operated by an Alabama school district exploded killing the employee driver. The school district's insurer appealed a decision that it was obligated to defend and indemnify the school district employees sued by the survivors of the employee.[70] After the board of education was dismissed from the suit, the question involved only four supervisory employees. The court found the insurance company did have an obligation to them. Although coverage was excluded for liability arising out of the operation or ownership of an automobile, the supervisors did not own or operate the vehicle. Furthermore, the driver was not an employee of the supervisors, but of the board. Finally, when doubt exists concerning the coverage under an insurance policy, the language used by the insurer should be construed for the benefit of the insured.

A school district's excess insurer brought an action to recover the excess benefits it paid for injuries a Minnesota student sustained while playing basketball with an insured student assistant in gym class. The insurer sought reimbursement from the student assistant's homeowner's insurer.[71] The court held that the excess insurer was obligated to pay for the student's injuries. The excess clause in the umbrella policy was determined only to limit the secondary insurer's liability as it related to the primary insurer.

A motor vehicle insurer brought an action against a Georgia school board to determine whether an accident which had killed a student was covered by the policy issued to the board. Following a

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69. Unified School Dist. No. 501 v. Continental Casualty Co., 723 F. Supp. 564 (D. Kan. 1989). For a case with similar reasoning but a different conclusion *see* Bachmayer v. Toledo Bd. of Educ., 541 N.E.2d 1078 (Ohio Ct. App. 1988). A school board was statutorily required to defend and indemnify a teacher who was a plaintiff in a negligence action brought against both parties by a student injured in the teacher's class.

70. Guaranty Nat'l Ins. Co. v. Marshall County Bd. of Educ., 540 So. 2d 746 (Ala. 1989). *See also* St. Paul Guardian Ins. Co. v. Canterbury School of Fla., 548 So. 2d 1159 (Fla. Ct. App. 1989). A school district was covered by its liability policy where the identity of the insureds was not found ambiguous. In Geneva County Bd. of Educ. v. CNA Ins. Co., 874 F.2d 1491 (11th Cir. 1989) a county board of education was entitled to compensatory damages for fraud by an insurer regarding the extent of its coverage of the board.

71. Interstate Fire & Casualty Co. v Auto-Owners Ins. Co., 433 N.W.2d 82 (Minn. 1988).

decision in favor of the school board, the student's parents appealed.[72] The court of appeals upheld the decision finding that any error which had arisen from allowing the jury to consider the reasonableness of the student's conduct was harmless. The jury did not reach that issue as it had confined itself to the question of whether the bus driver had instructed the student, or given instructions which could have been misinterpreted, which caused the student to cross a busy highway.

A school district's insurer sought to invoke the Education for the Handicapped Act in a third-party action it brought against a Pennsylvania school district.[73] The injuries sustained by a child in an automobile accident left her in need of special education services. The court held that the obligation of the school district to provide services for a handicapped child did not relieve the insurer from its obligation to provide services to the child.

ATTORNEY FEES

An Alabama elementary school board filed a petition to find a county board of education in contempt for violating a writ ordering the removal of one principal and the assignment of another. On appeal, the court found the county board was properly held in contempt and was responsible for the attorney fees incurred in the proceeding.[74]

After a Colorado plaintiff was successful in a civil rights action, a hearing was held to determine the amount of the recovery of damages and attorneys fees.[75] The court determined that fees in such a case should be calculated as if there was a contract calling for a reasonable hourly rate not contingent on the success or failure of the action. This resulted in a reduction of more than 300 hours from the attorney's claim of 1,000 hours spent in litigating the lawsuit.

A Rhode Island elementary school principal successfully defended himself against charges of sexual assault on girls who attended his school. He then sought recognition of statutory indemnification for legal services. The court held that the statute only

72. Cawthon v. Waco Fire & Casualty Ins. Co., 380 S.E.2d 327 (Ga. Ct. App. 1989).
73. Gehman v. Prudential Property and Casualty Ins. Co., 702 F. Supp. 1192 (E.D.
74. *Ex parte* Cleburne County Bd. of Educ., 545 So. 2d 802 (Ala. Civ. App. 1989).
75. Cunico v. Pueblo School Dist. No. 60, 705 F. Supp. 1466 (D. Colo. 1988).

applied in civil actions, unlike the criminal proceedings which had involved the principal.[76]

EMPLOYEE INJURIES/WORKERS' COMPENSATION

A California worker who was injured during her employment as a teaching assistant was successful in her challenge of a workers' compensation appeals board decision disallowing temporary indemnity.[77] The court held that since her full wages were less than the statutory minimum for calculating temporary indemnity, she was entitled to temporary disability payments at the statutory minimum rate throughout the period of her disability.

A Florida employer sought review of an order for workers' compensation benefits.[78] The court found the employer's past weekly contribution to the employee's retirement program was properly included when determining benefits for a job-related injury.

A New Jersey widow sought continuation benefits for the two months a year she did not work as a teacher.[79] The court determined that she was entitled to the benefits as the collective bargaining agreement did not give her a choice between being a ten-month or twelve-month employee.

An Illinois school bus driver was injured when her bus collided with an automobile. She was successful in her action for an adjustment in her claim under the Workers' Compensation Act.[80] The court found that an earlier decision that her surgery was not related to the accident was contrary to the evidence presented by her physician.

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76. Monti v. Warwick School Comm., 554 A.2d 638 (R.I. 1989).

77. Hayes v. Workers' Compensation Appeals Bd., 261 Cal. Rptr. 908 (Ct. App. 1989).

78. Hillsborough County School Bd. v. Fliter, 539 So. 2d 1145 (Fla. Dist. Ct. App. 1989). *See also* Polk County School Bd. v. Cobbett, 547 So. 2d 991 (Fla. Dist. Ct. App. 1989). Evidence that a claimant was not totally and permanently disabled, and the determination that the claimant's retirement benefits had not vested, meant that only 35% of the claimant's sick leave benefits could be used in calculating the claimant's average weekly wage.

79. Sarisky v. E.R. Squibb and Sons, Inc., 559 A.2d 471 (N.J. Super. Ct. App. Div. 1989). In Myles v. Paragould School Dist., 770 S.W.2d 675 (Ark. Ct. App. 1989) the limitations period for filing a claim for additional benefits was found to have begun when the claimant received a late benefit payment, rather than from the time his benefits were scheduled to end.

80. Edgcomb v. Industrial Comm'n, 536 N.E.2d 1364 (Ill. App. Ct. 1989). *See* Askew v. Ann Arbor Pub. Schools, 433 N.W.2d 800 (Mich. 1988). An injured worker was not required to present evidence of a change in his physical condition to preserve his right to a hearing on a further claim related to the same injury.

The abbreviated physical examination performed by the employer's physician was seen as inadequate given the driver's symptoms.

A New Mexico teacher was injured when she fell off a platform leading to a portable classroom. She was unsuccessful in her appeal from the compensation order.[81] Evidence supported that the psychological condition from which the teacher was suffering was temporary, precluding an increase in her partial disability rating. In denying certain medical bills, the court explained that an injured worker cannot be compensated for independent medical treatment when the employer has indicated a willingness to furnish treatment, and has actively made such services available.

The denial of her workers' compensation benefits to a part-time school district assistant cook was upheld on appeal to the Supreme Court of North Dakota.[82] The cook failed to establish the extent of her disability by refusing to return to work on a modified basis.

A Florida school board employee was injured when the brace she wore on her leg gave way causing her to fall and fracture her ankle. The employee had needed a brace since contracting polio as a youth. The denial of her workers' compensation claim was upheld as the court saw the fall and injury as solely a result of her personal condition.[83] The court explained that to compensate the employee for this type of injury would violate the legislative intention of the applicable statutes.

A New York board of education was successful in an action challenging an employee's award under the Workers' Occupational Diseases Act.[84] A teacher's mental disorder had developed over a period of twelve to sixteen months, and reached the level of suicidal depression after he was slapped by an eighth-grade girl. The court found that the evidence did not establish that the slapping was an event which arose from a stress situation of a greater dimension than that experienced by other teachers.

An Oregon worker sought review of a workers' compensation board determination that her employer, who was now self-insured, rather than the former insurer, was responsible for her deteriorating

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81. Bowles v. Los Lunas Schools, 781 P.2d 1178 (N.M. Ct. App. 1989).

82. Risch v. North Dakota Workers' Compensation Bureau, 447 N.W.2d 308 (N.D. 1989). *See* Dailey v. Royal Ins. Co., 551 So. 2d 55 (La. Ct. App. 1989). A school lunchroom worker was unable to have her benefits increased when expert testimony showed she was not disabled.

83. Leon County School Bd. v. Grimes, 548 So. 2d 205 (Fla. 1989).

84. Board of Educ. of Chicago v. Industrial Comm'n, 538 N.E.2d 830 (Ill. App. Ct. 1989).

back condition.[85] The court reversed the decision, holding that a shift in responsibility to a subsequent employer or insurer requires the subsequent employer to contribute independently to the need for treatment. Because the worker had not experienced a need for treatment as a result of her worsening condition, the court found no basis for shifting responsibility for that condition.

Failure by a Minnesota school district to promptly report an employee's injury earned a penalty assessment from the workers' compensation division of the Department of Labor and Industry. The appeal of the decision was successful as the court determined that the penalty did not apply to an employer who fails to promptly report a work injury but pays full wages to the employee under a wage continuation program.[86]

DEFAMATION

After a Colorado junior high school coach lost his job, he sued the high school coach for defamation, outrageous conduct, and invasion of privacy.[87] The head coach confronted the plaintiff with has past conviction for child molestation and made the information available to others. The court held that the truth of the statements precluded an action for defamation, and that the actions of the coach did not reach the level of outrageous conduct. Finally, a mere lapse of time since the plaintiff's conviction did not render that information private.

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85. Columbia County School Dist. No. 13 v. Thurston, 773 P.2d 1354 (Or. Ct. App. 1989). In contrast, in Murray County Bd. of Educ. v. Wilbanks, 379 S.E.2d 559 (Ga. Ct. App. 1989) an employer was required to pay the claimant directly for medical expenses previously paid by the claimant's group insurance carriers.

86. Urbanski v. Independent School Dist. No. 280, 446 N.W.2d 388 (Minn. 1989). For another case largely decided on procedural grounds *see* Weatherspoon v. Department of Labor and Indus., 777 P.2d 1084 (Wash. Ct. App. 1989). Although the appellate court was not bound by a trial court's findings when based solely on a review of the transcript and administrative hearing, the court undertook a review of the records where there was evidence supporting a challenge to the trial court's findings.

87. Lindemuth v. Jefferson County School Dist. R-1, 765 P.2d 1057 (Colo. Ct. App. 1988). *See also* Agins v. Darmstadter, 544 N.Y.S.2d 635 (App. Div. 1989). A school superintendent's comments to district and outside personnel were made in the course of his official duties and thus could not be considered defamatory.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A North Carolina student, who was allegedly sexually assaulted by her principal, brought an action against her school's superintendent and the truancy officer.[88] The truancy officer had filed a juvenile petition because of the girl's attendance problems. The court denied the claim of intentional infliction of emotional distress as no evidence was found that the officer knew of the alleged assault, or that he intended to cause emotional distress. In addition, the superintendent was not found negligent in the investigation, hiring, and supervision of the principal. There was no evidence that he knew of the alleged assault or failed to act.

TORTIOUS INTERFERENCE WITH A CONTRACT

A demoted high school principal sued members of a Missouri school board, the school district, and two supervisors, claiming tortious interference with and breach of contract. The plaintiff claimed that the supervisors had falsely accused him of incompetency, written accusatory memos which were exaggerated, and implied that students at his school conducted themselves in a manner which did not occur at other high schools in the district. The trial court's dismissal of the action was affirmed on appeal.[89] The court held that the malice was not material as there was a justifiable purpose for the defendants' actions. Furthermore, there was no evidence that the supervisors were motivated solely by malice or ill will against the principal.

PRODUCT LIABILITY

For several years, cases involving asbestos increasingly have been considered by the courts. This year, a Texas court has allowed certification of a class action suit brought by one school district but involving sixty-six others.[90]

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88. Medlin v. Bass, 386 S.E.2d 80 (N.C. Ct. App. 1989).
89. Franklin v. Harris, 762 S.W.2d 847 (Mo. Ct. App. 1989).
90. National Gypsum v. Kirbyville Indep. School Dist., 770 S.W.2d 621 (Tex. Ct. App. 1989).

Two Kansas school districts brought a liability action concerning the installation of asbestos-containing products in their buildings.[91] The plaintiff companies sought summary judgment contending the action was barred by the applicable statute of limitations. The district court disagreed explaining that statutes of limitations do not apply in causes of action which arise out of governmental functions. The construction of a school building was seen as incidental to a state's overall duty to provide public education, while the operation of a school building was held to be a governmental function.

A year after a Tennessee product liability statute[92] was enacted an asbestos exception was added. Faced with a suit from a school district, an asbestos manufacturer moved for a summary judgment. The court denied the judgment holding that the vested rights doctrine did not bar claims against an asbestos manufacturer before those claims have been discovered.[93]

A North Dakota school district brought a negligence action against a manufacturer of asbestos-containing ceiling tiles.[94] After the jury found for the school district, the manufacturer moved for a judgment notwithstanding the verdict. The court denied the motion since the jury was not found to have acted in a manner that no reasonable jury could have behaved. Evidence established malice on the part of the manufacturer thus supporting an award of punitive damages to the school district.

A defective accelerator caused a school bus to crash into a building. In the suit that followed, neither the driver nor the Louisiana school board were found comparatively negligent.[95] Additionally, the school bus body manufacturer and the seller were not found at fault. A rubber mat which had been installed over the accelerator stop on the bus was not determined to have contributed to the misaligned accelerator panel, and thus was not a factor in the collision.

A product liability suit was brought by a Louisiana school em-

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91. Unified School Dist. No. 500 v. United States Gypsum Co., 719 F. Supp. 1003 (D. Kan. 1989). *See* Murray County Bd. of Educ. v. Wilbanks, 379 S.E.2d 559 (Ga. Ct. App. 1989). An employer was required to pay the claimant directly for medical expenses previously paid by the claimant's group insurance carriers.

92. Tenn. Code Ann. § 29-28-103 (1980).

93. Clarksville-Montgomery Bd. of Educ. v. United States Gypsum Co., 710 F. Supp. 1157 (M.D. Tenn. 1989). *See* West Haven School Dist. v. Owens-Corning Fiberglas, 721 F. Supp. 1547 (D. Conn. 1988). A school district was not shielded by sovereign immunity from a defendant's statute of limitations defense in an asbestos case.

94. Hebron Pub. School Dist. v. United States Gypsum Co., 723 F. Supp. 416 (D.N.D. 1989).

95. Foster v. Craig Equip. Co., 550 So. 2d 818 (La. Ct. App. 1989).

ployee who was injured while attempting to close a school lunch table.[96] The manufacturer of the table was found liable on the "failure to warn" or "dangerous design" theory. No assumption of risk was found by the court as the employee was not aware of the amount of force necessary to close the table.

After a Louisiana truck driver, owner, and insurers were found liable for negligence in a collision with a school bus they filed a third-party action alleging negligent design and manufacture of the bus.[97] While the defendants admitted fault for the collision, they did not feel they were 100% responsible for the injuries sustained in the accident. They contended that had there been seat belts the injuries would have been less severe. In dismissing the third-party claim, the court held the seat beltless bus legally safe under prevailing statutes. The court added that it would be improper for a court to usurp a legislature's regulatory function where the legislature had clearly considered the various options and possibilities.

CONSTRUCTION CONTRACTS

A contractor brought a breach of contract action against an Alaskan school district concerning the completion date for several schools.[98] At trial the contractor produced evidence of a pre-bid conference in which the school district allowed a completion date up to eleven months later than the contracted date. After the work began, the district pressured the contractor to complete the work on schedule. The contractor sought compensation for the costs resulting from an unwarranted acceleration. The trial court's finding for the contractor was reversed by the state supreme court. Parol evidence was deemed inadmissible as an enforceable promise by the school district.

A general contractor who agreed to build a high school for a Colorado school district subcontracted with another firm for electrical work. That firm ordered supplies from an electrical supplier. After the general contractor terminated its agreement with the subcontractor, the subcontractor asserted a claim with the school district

96. Strain v. Mitchell Mfr. Co., 534 So. 2d 1385 (La. Ct. App. 1988).

97. Brown v. Landry, 552 So. 2d 1299 (La. Ct. App. 1989).

98. Alaska Diversified Contractors v. Lower Kuskokwim School Dist., 778 P.2d 581 (Alaska 1989). The interpretation of contract language was at issue in Elkhart Community School Corp. v. Mills, 546 N.E.2d 854 (Ind. Ct. App. 1989). A school corporation was not found to have breached contract for the sale of a school building where the purchaser had prior notice of the presence of asbestos.

for supplies used in building the high school. The general contractor brought suit for the interest on the funds which were withheld by the school district to meet the subcontractor's claims. The court held the school district was entitled to the interest because its benefit was not conferred by the contractor, but rather by statutory mandate.[99]

A New York school district brought an action for negligence and professional malpractice against an architectural firm and its consulting engineers.[100] The plaintiff sought compensation for expenses incurred due to the defendants' inaccurate report of serious structural weaknesses in a school annex. The court found for the school district asserting that the defendants could not have failed to be aware that the reports they furnished would be relied upon by the district. Therefore, a duty of diligence was owed and not provided.

The second lowest bidder on a school construction contract sued a Louisiana school board claiming a violation of public contracts law.[101] While not disputing that another company had submitted a lower bid, exception was made to preconditions attached to the bid requiring the district to pay monies owed before work would be undertaken at the quoted price. In finding for the defendant, the trial court determined that the contract was substantially completed and noted that the school board would have been faced with paying the entire contract price to the company which received the bid, and additional profit to a company which only submitted a bid and filed suit for damages. The decision was reversed on appeal. Statutory bidding requirements were found to have been violated, therefore the fact that the lowest bidder had been paid for its work did not preclude a damages award for the next lowest bidder.

An Alabama statute[102] allows a board of education to accept a bid for personal property from a resident bidder if it is no more than 3% above the lowest bid from a responsible outside bidder. The Supreme Court of Alabama, when asked to interpret the statute, held that a roof in the process of erection is a part of the realty and therefore not personal property. Thus, the action brought by the lowest bidder was

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99. Elliott Elec. Supply Co. v. Adolfson & Peterson Inc., 765 P.2d 1079 (Colo. Ct. App. 1988).

100. Ossining Union Free School Dist. v. Anderson, 541 N.Y.S.2d 335 (1989).

101. Airline Constr. Co. v. Ascension Parish School Bd., 549 So. 2d 1240 (La. Ct. App. 1989). *See* State *ex rel.* Page v. Reorganized School Dist. R-VI, 765 S.W. 2d 317 (Mo. Ct. App. 1989). A school board was not required to award a construction contract to the lowest bidder. In Bil Jim Constr. Co. Inc. v. Manchester Township Bd. of Educ., 566 A.2d 585 (N.J. Super. Ct. Law Div. 1989) the low bidder for construction of a school's tennis courts successfully reopened the bidding where the court found more detailed construction specifications were required.

102. Ala. Code § 41-16-50(a) (1975).

successful as the statute was not held to apply to the reroofing contract.[103]

The low bidder on a Massachusetts school construction contract brought an action for injunctive relief after its bid was rejected for failure to comply with minority and women business enterprise submission requirements.[104] The court denied relief, holding that the city had the discretion to reject the bid, even though it failed to include specific space on its bid form for women and minority certification data.

Due to a clerical error, a New York construction company submitted a bid on a school contract which was nearly $800,000 lower than intended. Although the school district was informed of the mistake when it was discovered, the board did not respond but rather accepted the bid. Recognizing that the company had acted in good faith, the court found for the construction company in its suit for equitable reformation of the contract.[105]

A Louisiana school board brought suit against a contractor and architect alleging a breach of standard of care in the designing and resurfacing of two high school running tracks.[106] The court of appeals awarded $100,000 to the school board reflecting the amount expert testimony indicated would be necessary to repair defects in the tracks. The architect's plans failed to require the tracks and track bases to be repaired prior to the resurfacing, and the architect failed to stop the work and investigate soft areas.

A New York school district brought an action against a roofing material supplier for damages incurred by a refusal to repair leaks in a school roof.[107] In finding for the school district the court held that the Uniform Commercial Code's implied warranty of fitness applied to the transaction between the school district and the supplier. Addi-

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103. Tin Man Roofing Co. v. Birmingham Bd. of Educ., 536 So. 2d 1383 (Ala. 1988).

104. Peabody Constr. Co. v. City of Boston, 546 N.E.2d 898 (Mass. App. Ct. 1989).

105. Iversen Constr. Corp. v. Palmyra-Macedon Cent. School Dist., 539 N.Y.S.2d 858 (Sup. Ct. 1989).

106. Terrebonne Parish School Bd. v. D & O Contractors, Inc., 545 So. 2d 588 (La. Ct. App. 1989). *See* Rome Gen. Contracting Co. v. Board of Educ. of N.Y.. A contractor was found in default for failure to install window guards at a high school. However, in Prichard Bros. Inc. v. Grady Co., 436 N.W.2d 460 (Minn. Ct. App. 1989), an architect was determined not to be an agent of a school district with regards to his negligence.

107. Board of Educ. v. Celotex Corp., 542 N.Y.S.2d 671 (App. Div. 1989). In E.C. Goldman Inc. v. A/R/C Assocs. Inc., 543 So. 2d 1268 (Fla. Dist. Ct. App. 1989) experts hired by a school board to inspect a roof were not held liable to a roofing subcontractor for negligence in the report they filed which recommended the board not accept the roof. In Board of Educ. v. Sergeant, 539 N.Y.S.2d 814 (App. Div. 1989) a school district was unable to show proof of intent as required to state a cause of action for fraud involving an architect's concealment of a roofing contractor's nonperformance.

tionally, the school district's damages were not limited to expenditures made by the district to repair the leaks.

CONSTITUTIONAL TORTS

Student Initiated Cases

A New York elementary student brought a section 1983 action against school officials to recover for failure to prevent continuing attacks and abuse by other students.[108] The defendants asked for a dismissal of the action. In denying the motion, the district court explained that for the claim to be cognizable it must contain two elements. First, the conduct complained of must have been committed by a person acting under color of state law. Second, the defendant's conduct must have deprived the plaintiff of rights, privileges, or immunities secured by the United States Constitution. In his complaint, the plaintiff alleged that the acts and omissions were all done by the defendants under existing New York State and county statutes, ordinances, regulations, customs, and usages. This met the first test for section 1983 liability. The court found the second test to have been met as well. While a single act of ordinary negligence may not form the basis of a civil rights claim, the allegation of seventeen separate incidents was found to rise to the level of deliberate indifference to an affirmative duty.

The issue of qualified immunity for a principal and assistant principal was settled in a Pennsylvania case which was remanded from the Supreme Court.[109] A female member of a high school band brought the action for injuries arising from sexual assaults by the band's director.[110] The Third Circuit Court of Appeals found that the student could maintain a civil rights action against the school officials for failing to take action on complaints of sexual misconduct which caused the student constitutional harm. Commenting on the ten-year period from the time of the abuse, the court remanded the case and was hopeful of an expeditious conclusion.

A Missouri teacher entered her classroom and found some students fighting. She picked up a plastic baseball bat and began hit-

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108. Pagano v. Massapequa Pub. Schools, 714 F. Supp. 641 (E.D.N.Y. 1989). In Howlett v. Rose, 537 So. 2d 706 (Fla. Dist. Ct. App. 1989), a civil rights action against a school district was barred by the common-law sovereign immunity available under state law.

109. Smith v. Stoneking, 109 S. Ct. 1333 (1989).

110. Stoneking v. Bradford Area School Dist., 882 F.2d 720 (3d Cir. 1989).

ting the students. The students brought a civil rights action against the school district claiming a failure to adequately monitor and supervise the teacher.[111] The court denied the district's motion to dismiss the action or, in the alternative, grant a summary judgment. In ordering the case for trial, the court cited the district's knowledge of the teacher's prior violations of the corporal punishment policy. The court explained that the school district's passivity in dealing with the teacher could constitute a section 1983 violation.

A nine-year old Kentucky student asserted that her substantive due process rights were violated when she was paddled a total of seven times over a thirty-minute period. The court found that, although the student was bruised by the spanking, she was not injured to a point which would "shock the conscience"[112] of the court. While the number of swats may have been excessive, and amounted to a violation of state tort law, they were not found to constitute a violation of the student's rights to substantive due process.[113]

The violation of a Georgia student's right to be let alone by other people was examined in a case where a student alleged she was photographed against her will by a teacher.[114] She further alleged assault and battery claiming the teacher touched her wrists and hair while ordering her into positions to photograph her decoratively painted fingernails. The court found the defendant teacher, board of education, and superintendent were not liable for an invasion of privacy. No fundamental right was found which if violated would be subject to redress under section 1983. Questions of fact as to whether the student consented or invited the touching of her person precluded summary judgment on the assault and battery issue for the teacher. The board and superintendent were found immune on the assault and battery charge.

The mother of a Texas high school student brought an action for damages as a result of injuries her son sustained while in a woodworking class.[115] She charged that the school district's negligence stated a claim for deprivation of her son's rights under the fourteenth amendment. The court denied her claim as the due process clause is not violated merely by the negligent acts of an official.

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111. Turley v. School Dist. of Kan. City, Mo., 713 F. Supp. 331 (W.D. Mo. 1989).
112. Rochin v. California, 342 U.S. 165 (1952).
113. Brown v. Johnson, 710 F. Supp. 183 (E.D. Ky. 1989).
114. Jarrett v. Butts, 379 S.E.2d 583 (Ga. Ct. App. 1989).
115. Burke v. Austin Indep. School Dist., 709 F. Supp. 120 (W.D. Tex. 1989). *See* Grubbs v. Aldine Indep. School Dist., 709 F. Supp. 127 (S.D. Tex. 1989). School district could not be held liable in a civil rights action for a student injured by a table saw during shop class.

Even if gross negligence were shown, an abuse of power made possible under the authority of state law must be proven. The mother's allegations failed to meet this test.

Employee Initiated Cases

An Illinois librarian brought an action against the school board and superintendent alleging her denial of "selected status" and transfer to another school were in retaliation for comments she made about the school system.[116] In response to a reporter's questions, the librarian had discussed problems relating to teaching in an inner-city environment and had talked about some positive aspects of teaching. The court found her statements constitutionally protected and the motivating factor in decisions regarding her status and transfer. The teacher was found entitled to compensatory damages for emotional distress, humiliation, and injury to her reputation, although the school board and superintendent were found immune from liability for punitive damages.

116. Thompson v. Board of Educ. of City of Chicago, 711 F. Supp. 394 (N.D. Ill. 1989).